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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,158	11/16/2001	Kenneth B. Higgins	5113D	1180

7590 04/23/2004
Milliken & Company
P.O. Box 1926
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,158

Applicant(s)

HIGGINS ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49, 58-85, 88-97, 99-128, 130, 131, 134-136, 138, 140 and 141 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49, 58-85, 88-97, 99-128, 130, 131, 134-136, 138, 140 and 141 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed February 5, 2004, has been entered. Claims 1, 37-39, 41, 58, 65, 66, 81, 83, 84, and 118 have been amended as requested, while claims 50-57, 86, 87, 98, 129, 132, 133, 137, 139, and 142-150 have been cancelled. Thus, the pending claims are 1-49, 58-85, 88-97, 99-128, 130, 131, 134-136, 138, 140, and 141.

2. Applicant's present amendment, along with a recent amendment to application 09/910,085, is sufficient to withdraw the provisional double patenting rejection with respect to said application, as set forth in sections 2-5 of the last Office Action. Additionally, the cancellation of claims 50-57, 86, 87, 98, 129, 132, 133, 137, 139, and 142-150 renders moot the rejections against said claims.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-4, 7-17, 19-25, 27-36, 40-42, 44-48, 88-97, 99-128, 130, 131, 134-136, 138, 140, and 141 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to HIGGINS in view of 5,610,207 issued to DE SIMONE et al., as set forth in section 7 of the last Office Action.

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Applicant has amended independent claims 1 and 41 to limit the claimed invention to a carpet tile. This amendment is insufficient to overcome the standing rejection since Higgins clearly teaches carpet tiles.

5. Claims 5, 18, and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited HIGGINS and DE SIMONE patents as set forth above and in further view of EP 048 986 issued to DOW, as set forth in section 8 of the last Office Action.

6. Claims 6, 26, and 49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited HIGGINS and DE SIMONE patents as set forth above and in further view of US 5,540,968 issued to HIGGINS, as set forth in section 9 of the last Office Action.

7. Claims 37-39, 65, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited HIGGINS and DE SIMONE patents as set forth above and in further view of US 5,540,968 issued to HIGGINS.

Claims 37-39 have been amended to limit the mass of adhesive to a contacting bonding relationship to the rebond foam cushion.

Higgins '857 exemplifies a carrier layer between the adhesive layer and the foam backing layer. However, it is well known in the art that said carrier layer can be omitted so that the adhesive layer is in contacting bonding relation to the foam backing. For example, Higgins '968 teaches a similar carpet structure wherein a reinforcement layer (i.e., carrier layer) is between the adhesive layer and the foam layer (Figure 3A and col. 6, lines 8-12). Higgins '968 also teaches an equivalent structure wherein said reinforcement layer is omitted and said adhesive layer directly contacts the foam layer (col. 6, lines 44-54 and Figure 4A). Thus, it would have been obvious to one skilled in the art to omit the carrier layer of Higgins '857, as is taught by Higgins

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'968, when bonding the rebond foam layer of de Simone to the Higgins '857 carpet tile.

Motivation to do so would be to eliminate a process step and the required apparatus unnecessary and to eliminate a layer, wherein the overall thickness of the carpet tile is reduced. Therefore, claims 37-39, 65, and 66 are rejected as being obvious over the cited prior art.

8. Claims 58-60, 62-64, 67, 69-73, and 75-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over HIGGINS '857 in view of HIGGINS '968.

Claim 58 has been broadened to remove the limitation that the foam layer is a rebond foam. Thus, the de Simone reference is no longer needed to reject said claims. Independent claim 58 also includes a limitation that the second layer of adhesive is in contacting relation with the upper side of the foam cushion layer.

Higgins '857 clearly teaches the two adhesive layers with a stabilizing layer therebetween (col. 1, lines 48-55 and Figure). Higgins '857 also exemplifies a carrier layer between the second adhesive layer and the foam backing layer. However, it is well known in the art that said carrier layer can be omitted so that an adhesive layer is in contacting bonding relation to the foam backing. For example, Higgins '968 teaches a similar carpet structure wherein a reinforcement layer (i.e., carrier layer) is between the adhesive layer and the foam layer (Figure 3A and col. 6, lines 8-12). Higgins '968 also teaches an equivalent structure wherein said reinforcement layer is omitted and said adhesive layer directly contacts the foam layer (col. 6, lines 44-54 and Figure 4A). Thus, it would have been obvious to one skilled in the art to omit the carrier layer of Higgins '857, as is taught by Higgins '968. Motivation to do so would be to eliminate a process step and the required apparatus unnecessary and to eliminate a layer, wherein

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the overall thickness of the carpet tile is reduced. Therefore, claims 58-60, 62-67, 69-73, and 75-80 are rejected.

With respect to claims 81-85, it is noted that Higgins '968 clearly teaches a nonwoven backing material adhered to the underside of the foam cushion layer. Thus, claims 81-85 are rejected.

9. Claims 61, 68, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited HIGGINS '857 and '968 patents as set forth above and in further view of US 5,616,200 issued to HAMILTON.

Both Higgins patents are silent with respect to the use of a bitumen adhesive backing layers for the carpet tile. However, said use is well known in the art to carpet tiles. For example, Hamilton teaches adhesive layers may include vinyl resins, thermoplastic hot melts, bitumen, or modified bitumen (col. 4, lines 30-34). Thus, it would have been obvious to one skilled in the art to substitute a bitumen adhesive layer for the adhesive layers of the Higgins patents since selection of any art recognized equivalent would be within the level of ordinary skill in the art. Therefore, claims 61, 68, and 74 are rejected as being obvious over the cited prior art.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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11. Claims 58-64 and 67-85 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0034606 issued to Miller et al.

Broadened claim 58 is no longer limited to a rebond foam layer. Miller discloses the presently claimed invention comprising (a) a tufted primary backing, (b) a pre-coat layer, (c) a first layer of resilient adhesive, (d) a reinforcing fabric, (e) a second layer of resilient adhesive, (f) a polyurethane foam cushion layer, and (g) a nonwoven felt backing layer. Note Figure 14. therefore, claims 58-64 and 67-85 are anticipated by the cited Miller disclosure.

Response to Arguments

12. Applicant's arguments and the Kilpatrick Declaration filed on February 5, 2004, have been considered but have not been found persuasive.

13. Specifically, applicant argues that one skilled in the art would not have been motivated to substitute the foam layer of the Higgins tile with the rebond foam of de Simone due to the reduced tensile and tear strengths reported in de Simone (Amendment, paragraph spanning pages 18-19). Additionally, the Kilpatrick Declaration attests that one skilled in the art would not have been motivated to substitute the de Simone rebond foam for the foam of Higgins "since strength and resiliency requirements of the tile would be expected to be adversely affected even in the same foam densities were utilized" (Declaration, section 14).

14. In response, it is first argued that applicant's arguments are not commensurate in scope with the claims. The present invention is not limited to a particular tensile or tear strength. Secondly, said Declaration is a subjective, opinion declaration, rather than a fact based, objective

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declaration. Applicant has not shown that the rebond foam of de Simone would in fact be unsatisfactory for the foam layer of the Higgins carpet.

15. With respect to applicant's argument that Higgins '857 teaches a carrier layer and thus, cannot establish a prima facie case of obviousness for claims 37-39 (Amendment, page 19, 1st paragraph), it is noted that the rejection of said claims has been changed to include the tertiary reference of Higgins '968. Thus, said argument is moot.

16. With respect to broadened claim 58 (i.e., elimination of the rebond limitation), applicant argues that the cited prior art still does not teach the claimed invention (Amendment, paragraph spanning pages 19 and 20). Specifically, applicant states that Higgins '857 teaches a carrier layer between the foam layer and the adhesive layer and as such, the present claim limitation of a second layer of adhesive in contacting relation to the foam layer is not present. In response, it is noted that the rejection of claims 58-85 are now based upon Higgins '857 in view of Higgins '968 which clearly teaches the omission of said carrier layer. Therefore, said argument is moot.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
April 18, 2004